

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 10-09-02 Item: 4.f.

File Number  
CP 01-043

Application Type  
Conditional Use Permit

Council District  
7

Planning Area  
South San José

Assessor's Parcel Number(s)  
477-26-009 and 010

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Carol Hamilton

Location: West side of Smith Avenue approximately 300 feet southerly of Phelan Avenue (1731 Smith Avenue)

Gross Acreage: 0.72

Net Acreage: 0.72

Net Density: N/A

Existing Zoning: H I

Existing Use: Auto dismantling facility

Proposed Zoning: No change

Proposed Use: Auto dismantling facility

### GENERAL PLAN

Completed by: CH

Land Use/Transportation Diagram Designation  
Heavy Industrial

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: CH

North: Industrial

HI Heavy Industrial

East: Industrial

HI Heavy Industrial

South: Industrial

HI Heavy Industrial

West: Industrial

HI Heavy Industrial

### ENVIRONMENTAL STATUS

Completed by: CH

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on 5/24/2000  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: CH

Annexation Title: Monterey Park No. 6 A

Date: 9/25/1959

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions  
☐ Denial

Date: \_\_\_\_\_  
☐ Uphold Director's Decision

Approved by: \_\_\_\_\_  
☐ Action  
☐ Recommendation

### APPLICANT

### OWNER

Ahmad and Mahin Moradi  
6881 Castle Rock Drive  
San Jose, CA  
95120

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: CH

Department of Public Works

See attached memorandum

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Other Departments and Agencies

None received.

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GENERAL CORRESPONDENCE

None received

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ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant is requesting a Conditional Use Permit (CUP) to allow the operation of an existing auto dismantling facility on a 0.72-acre site in the HI Heavy Industrial Zoning District. Auto dismantling is allowed in the HI District with a Conditional Use Permit.

In 1995, the Planning Commission approved a time-conditioned Conditional Use Permit (File No. CP94-10-075) for a auto dismantling operation that had been expanded without benefit of permit. Improvements required by this CUP were not implemented, the required Lot Combining Application was not submitted, and Code Enforcement staff determined that buildings and other improvements on the site had been constructed without benefit of Building Permits. The Conditional Use Permit expired at the beginning of 2000. The applicant filed this application for a new Conditional Use Permit in May of 2001. The proposed Conditional Use Permit would allow reinstatement of the auto dismantling use, installation of appropriate improvements and construction of a new approximately 4,000 square-foot metal storage building in the location of an existing building on the site that does not meet Building Code requirements.

The 0.72-acre subject site is made up of two parcels with a total of 82 linear feet of frontage on Smith Avenue. Three primary structures are located along the northerly property line, an existing 600 square-foot office at the front of the site which is proposed to remain, a metal building used for storage and a shed structure over the dismantling area. The site is entirely paved. A 26-foot wide driveway extends from Smith Avenue on the south side of the buildings to connect to a parking area and a gated outdoor storage area at the rear of the site. Surrounding uses consist of small industrial businesses and automotive shops.

**ENVIRONMENTAL REVIEW**

The potential environmental impacts of this project were addressed by a Negative Declaration approved for the project at the time of it original approval.

## **GENERAL PLAN CONFORMANCE**

The proposed auto dismantling use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Heavy Industrial.

## **PUBLIC OUTREACH**

Notices of the Planning Commission public hearing were mailed to all property owners and occupants of property within a 500-foot radius of the project site. Staff has been available to discuss the project with the public

## **ANALYSIS**

The primary issue associated with this proposal is this project's compliance with the City requirements for dismantling facilities.

### **Proposed Plans and Conditions**

The applicant has provided plans that meet the City's requirements for an auto dismantling facility. A 10-foot metal fence is proposed to surround the dismantling and storage areas of the site. Customer parking is located at the front of the site and is separated from the dismantling and storage area by a gate. The dismantling area is proposed to be covered and surrounded by a six-inch berm to prevent vehicle fluids from being washed into the City's storm drain system. Staff has included a condition in the permit to ensure that the pavement of the bermed area is sealed in conformance with the requirements of the Hazardous Materials Ordinance. Conditions have been placed in the permit requiring that the site be swept regularly and that spills of oil or other hazardous materials be cleaned up appropriately and that all hazardous materials waste be handled in conformance with City and State requirements. The draft permit requires that all engines and other mechanical parts be stored within a building and that outdoor storage not extend above the height of the surrounding fence.

The applicant has also agreed to bring the structures on the site into conformance with the Building Code. This will require replacement of the existing storage building with a new metal building, the addition of disabled access to the office building and modifications to other structures on the site as necessary to meet building code requirements. The Permit includes a five-year time condition to allow the Commission to review the operation of the facility prior to any proposed extension of the use beyond this time period.

### **Implementation of Project Requirements**

Staff has included conditions in the draft permit identifying a time schedule for bringing the site into conformance with all applicable requirements. The condition also includes a requirement that the applicant provide written reports documenting achievement of the required milestones. If the applicant fails to meet any of the required deadlines, staff will take steps to bring the matter back before the Commission through the Notice of Non-Compliance/Order to Show Cause process.

## RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Heavy Industrial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the HI Heavy Industrial Zoning District.
3. A Negative Declaration was prepared for the original approval of this auto dismantling facility (CP 94-10-075) indicating that the project would not result in any significant environmental impact. The current project is essentially the same as that addressed in the adopted Negative Declaration.
  - a. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
4. The applicant is requesting a Conditional Use Permit (CUP) to allow an auto dismantling facility. Auto dismantling uses are Conditional Uses in the HI Heavy Industrial Zoning District and require the approval of a CUP.
5. The dismantling facility occupies a 0.72 acre site. The use was approved by the Planning Commission in 1995 (File No. CP94-10-075) with a five-year time condition.
6. The prior Conditional Use Permit required combining of two lots through a Lot Combining Permit. Such a permit was never filed and the site consists of two separate lots. A condition has been included in this permit requiring the recordation of a Lot Line Adjustment to combine the two lots into one prior to issuance of a Public Works Clearance for the proposed project.
7. Improvements required by this permit were not installed. Code Enforcement staff have determined that buildings and other improvements on the site had been constructed without benefit of building permits. The previously approved Conditional Use Permit expired at the beginning of 2000.
8. The applicant filed this Conditional Use Permit application in May of 2001. The proposed Conditional Use Permit would allow reinstatement of the auto dismantling use, installation of appropriate improvements and construction of a new approximately 4,000 square-foot metal storage building in the location of an existing building on the site that does not meet Building Code requirements.
9. The subject site is flag-shaped, has 82 linear feet of frontage on Smith Avenue and contains

three primary structures located along the northerly property line. An existing 600 square-foot office at the front of the site is proposed to remain. A metal building used for storage is proposed for demolition to be replaced with a new metal storage building in the same location. A covered dismantling area is located behind the storage building. The site is entirely paved. A 26-foot wide driveway extends from Smith Avenue on the south side of the buildings to connect to a parking area and a gated outdoor storage area at the rear of the site.

10. Surrounding uses are small industrial businesses and automotive shops.
11. The applicant has provided plans that meet standard City requirements for an auto dismantling facility. A 10-foot metal fence is proposed to surround the dismantling and storage areas of the site. Customer parking is located at the front of the site and is separated from the dismantling and storage area by a gate. The dismantling area is proposed to be covered and surrounded by a six-inch berm to prevent vehicle fluids from being washed into the City's storm drain system. A condition has been included in this permit requiring sealing of the bermed area in conformance with the requirements of the Hazardous Materials Ordinance. Conditions have been placed in the permit requiring that the site be swept regularly and that spills of oil or other hazardous materials be cleaned up appropriately, that all hazardous materials waste be handled in conformance with City and State requirements, that all engines and other mechanical parts be stored within a building and that outdoor storage not extend above the height of the surrounding fence.
12. This permit requires that the applicant obtain building permits for all of the structures on the site and that these structures be brought into compliance with the Building Code.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The project as proposed and conditioned conforms to the City's requirements for auto dismantling.

Finally, based upon the above-stated findings and subject to the Conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or

- c. Be detrimental to public health, safety or general welfare; and
- 2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
- 3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

- 1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
- 2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
- 3. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

- 1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code

requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Building Permit and Implementation of Use.** A Building Permit or implementation of an auto dismantler use is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
3. **Building Code Compliance.** The applicant shall obtain all necessary Building Permits and bring all structures on the site into conformance with the Building Code. The applicant shall obtain Building Permits for the storage racks shown on the project plans, or shall remove the racks from the site.
4. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Conditional Use Permit for 1731 Smith Avenue," dated May 2002 and last revised September 25, 2002, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
5. **Auto Dismantler Use.** This permit authorizes an auto dismantler use contingent upon conformance of the site with the requirements of the San Jose Building Code, the approved development plans, and the conditions of this permit.
6. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
7. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
8. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
9. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

10. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 14 feet above grade.
11. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Auto Storage.** The storage of vehicles is only allowed on that part of the site designated "storage yard" on the project plans. Storage of vehicles shall not be allowed in the public right-of-way.
13. **Roof Equipment.** All roof equipment shall be screened from view.
14. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
15. **Outside Storage.** No outdoor storage is permitted except in areas designated on the approved plan set and no storage is permitted above the height of the perimeter fence. All mechanical parts shall be stored within the enclosed building.
16. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
17. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
18. **Street Trees.** Street trees shall be planted on the street frontage to the satisfaction of the Director of the Department of Streets and Traffic. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373.
19. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
20. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-08783) to the satisfaction of the Director of Public Works:
  - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
  - b. *Grading Permit.* A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants to the storm drain system from the site. An erosion control plan may be required with the grading application.
  - c. *Soils Report.* A soil investigation report addressing the hazard of liquefaction must



be submitted to, reviewed and approved by the project engineer and/or City Geologist prior to issuance of a grading permit or a Public Works Clearance.

- d. *Undergrounding.* The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Smith Avenue prior to issuance of a Public Works Clearance. One hundred percent of the base fee in place at the time of payment will be due.
  - e. *Lot Line Adjustment.* The applicant shall record a Lot Line Adjustment combining the two parcels.
21. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP 01-05-043, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
22. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
23. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
24. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
25. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
26. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
27. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or

within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau. The bermed dismantling area shall be sealed to create a surface impervious to vehicle fluids and other hazardous material.

28. **Site Maintenance.** The site shall be swept daily or as necessary to keep paved surfaces free of dirt and debris. Spills of oil, other vehicle fluids or other hazardous materials shall be immediately cleaned with appropriate absorbent material and all hazardous residue shall be disposed in conformance with all applicable State and local requirements.
29. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
30. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
31. **Dismantling Activities.** Dismantling shall only occur in the designated area as shown on the approved plan set.
32. **Conformance Schedule.**
  - a. The applicant shall obtain a Public Works Clearance, record a Lot Line Adjustment to combine the parcels, and obtain Building Permits for the improvements required in this Permit within 60 days of approval of this Permit. No later than 60 days from the date of approval of this Permit, the applicant shall submit a written report to the Director of Planning verifying compliance with these requirements. The report shall include the file number of this Permit (CP01-043).
  - b. The applicant shall bring the site into conformance with the Building Code, the Hazardous Materials Ordinance and the requirements of this Permit within 150 days of approval of this Permit. No later than 150 days from the date of approval of this Permit, the applicant shall submit a written report to the Director of Planning verifying compliance with these requirements. The report shall include the file number of this Permit (CP01-043).

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity

of this permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44 Title 20 of the San Jose Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation;
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use a presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date of this permit.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.